

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAUSE NO. EP-21-CV-173-KC

**THE STATE OF TEXAS and GREG
ABBOTT, in his official capacity as
Governor of the State of Texas,**

Defendants.

**ANNUNCIATION HOUSE; ANGRY
TIAS & ABUELAS OF THE RIO
GRANDE VALLEY; JENNIFER
HARBURY; and FIEL HOUSTON,**

A vertical decorative border consisting of a series of stylized, swirling, S-shaped lines.

Plaintiffs,

v.

CAUSE NO. EP-21-CV-178-KC

GREG ABBOTT, in his official capacity as Governor of the State of Texas; and STEVEN MCCRAW, in his official capacity as Director of the State of Texas Department of Public Safety,

Defendants.

ORDER

On this day, the Court considered Defendants' Motion to Transfer Venue to the First- Filed Court ("Motion"), ECF No. 35. In their Motion, Defendants argue that this case should be

transferred to the Northern District of Texas, where *Texas v. Biden*, No. 4:21-cv-579 (N.D. Tex.), is pending, under the “first-to-file rule.” For the reasons discussed herein, Defendants’ Motion is **DENIED**.

In *Texas v. Biden*, the State of Texas filed a Complaint for Declaratory Relief against President Joseph R. Biden, Jr., and several federal agencies, challenging a series of administrative actions related to the expulsion of noncitizens. Compl., No. 4:21-cv-579, ECF No. 1 (April 22, 2021). The Complaint focused on an order by the Centers for Disease Control and Prevention (“CDC”) issued on February 17, 2021 (“February Order”), which exempted unaccompanied noncitizen children from certain expulsion policies. *Id.* ¶¶ 84–123. Texas also filed a Motion for Preliminary Injunction to enjoin the defendants from any activities in furtherance of the February Order. Mot. Prelim. Inj., *Texas*, No. 4:21-cv-579, ECF No. 21 (June 23, 2021). Subsequently, the CDC issued an order on July 16, 2021 (“July Order”) that superseded the February Order. Notice New CDC Order, *Texas*, No. 4:21-cv-579, ECF No. 50 (July 16, 2021). Because the February Order at issue was no longer in place, the Northern District denied Texas’ Motion for Preliminary Injunction as moot. Order, *Texas*, No. 4:21-cv-579, ECF No. 54 (July 29, 2021). Texas then filed an Amended Complaint, challenging the July Order, among other things. Am. Compl., *Texas*, No. 4:21-cv-579, ECF No. 62 (Aug. 23, 2021).

In their Motion to Transfer in this case, Defendants argue that the issues presented substantially overlap with those in *Texas v. Biden*. Mot. 3–6. Because *Texas v. Biden* was filed prior to this case, Defendants argue that the Northern District of Texas has the authority to determine whether this case should be transferred under the “first to file rule.” Mot. 1–2. However, Defendants base that argument on the content of the original Complaint in *Texas v. Biden*. See Mot. 1; Mot. Ex. A, ECF No. 35-1 (original Complaint attached to Motion to

Transfer). As discussed, that Complaint is no longer operative, as Texas has filed an Amended Complaint in *Texas v. Biden* that challenges a different set of federal government actions. Because the allegations in the case before the Northern District have changed, Defendants' Motion, ECF No. [35](#), is **DENIED** as moot.

SO ORDERED.

SIGNED this 11th day of January, 2022.



KATHLEEN M. CARDONE
UNITED STATES DISTRICT JUDGE